

PATENT
 Attorney Docket No. 39573.830003.004
 Express Mail No. EL3799006473US

**COMBINED DECLARATION AND POWER
 OF ATTORNEY FOR PATENT APPLICATION**

DECLARATION:

As the below named inventors, we hereby declare that:

Our residences, post office addresses and citizenships are as stated below next to our names.

We believe we are the original, first and joint inventors of the subject matter that is claimed in application PCT/US99/08870 filed April 22, 1999 and entitled IMPLANTABLE CENTRIFUGAL BLOOD PUMP WITH HYBRID MAGNETIC BEARINGS.

We believe we are the original, first and joint inventors of the subject matter that is claimed and for which a United States patent is sought on the invention entitled HYBRID MAGNETICALLY SUSPENDED AND ROTATED CENTRIFUGAL PUMPING APPARATUS AND METHOD, filed in the United States Patent and Trademark Office on October 20, 2000 as Serial No. 09/673,922, which United States Patent application is a national filing out of PCT/US99/08870.

The persons named as the inventors in this United States Patent application are: Paul E. Allarie, Gill B. Bearnson, Ron Flack, Pratap S. Khanwilkar, B. Ajit Kumar, James W. Long, Jr., Don B. Olsen, Jeffrey Decker and Michael Balhoh.

We hereby state that we have reviewed and understand the contents of the above-identified United States specification, including the claims, as amended by any amendment referred to above.

We acknowledge the duty to disclose information which is material to the examination of this United States Patent application in accordance with Title 37, Code of Federal Regulations, § 1.56(a), as attached.

We hereby claim foreign priority benefits under Title 35, United States Code, § 119/365 of any foreign application(s) for patent or inventor's certificate listed below and have also identified below any foreign application for patent or inventor's certificate having a filing date before that of the application on the basis of which priority is claimed:

- ☒ no such applications have been filed.
☐ such applications have been filed as follows:

| FOREIGN APPLICATION(S), IF ANY, CLAIMING PRIORITY UNDER 35 USC § 119/365 | | | |
|--|--------------------|--------------------------------------|-------------------------------------|
| COUNTRY | APPLICATION NUMBER | DATE OF FILING (day, month, year) | DATE OF ISSUE (day, month, year) |
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| ALL FOREIGN APPLICATION(S), IF ANY, FILED BEFORE THE PRIORITY APPLICATION(S) | | | |
| COUNTRY | APPLICATION NUMBER | DATE OF FILING (day, month, year) | DATE OF ISSUE (day, month, year) |
| | | | |

We hereby claim the benefit under Title 35, United States Code, § 120/365 of any United States and PCT international application(s) listed below and, insofar as the subject matter of each of the claims of this United States Patent application is not disclosed in the prior United States application in the manner provided by the first paragraph of Title 35, United States Code, § 112, we acknowledge the duty to disclose material information as defined in Title 37, Code of Federal Regulations, § 1.56(a) which occurred between the filing date of the prior application and the national or PCT international filing date of this United States Patent application.

| U.S. or PCT APPLICATION NUMBER | DATE OF FILING (day, month, year) | STATUS (patented, pending, abandoned) |
|-----------------------------------|--------------------------------------|--|
| 60/016,856 | May 3, 1996 | Abandoned |
| 08/850,598 | May 2, 1997 | U. S. Patent No. 6,074,180 |
| 09/064,352 | April 22, 1998 | Abandoned |
| PCT/US/08870 | April 22, 1999 | Pending |

POWER OF ATTORNEY:

As named inventors, we hereby appoint the following patent attorneys to prosecute this application and transact all business in the Patent Office connected therewith:

3 Brian P. Kinnear, Reg. No. 43,717;
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We hereby declare that all statements made herein of our own knowledge are true and that all statements made on information and belief are believed to be true, and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

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§ 1.56 duty to disclose information material to patentability.

(a) A patent by its very nature is affected with a public interest. The public interest is best served, and the most effective patent examination occurs when, at the time an application is being examined, the Office is aware of and evaluates the teachings of all information material to patentability. Each individual associated with the filing and prosecution of a patent application has a duty of candor and good faith in dealing with the Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability as defined in this section. The duty to disclose information exists with respect to each pending claim until the claim is cancelled or withdrawn from consideration, or the application becomes abandoned. Information material to the patentability of a claim that is cancelled or withdrawn from consideration need not be submitted if the information is not material to the patentability of any claim remaining under consideration in the application. There is no duty to submit information which is not material to the patentability of any existing claim. The duty to disclose all information known to be material to patentability is deemed to be satisfied if all information known to be material to patentability of any claim issued in a patent was cited by the Office or submitted to the Office in the manner prescribed by §§ 1.97(b)-(d) and 1.98. However, no patent will be granted on an application in connection with which fraud on the Office was practiced or attempted or the duty of disclosure was violated through bad faith or intentional misconduct. The office encourages applicants to carefully examine:

(1) prior art cited in search reports of a foreign patent office in a counterpart application, and

(2) the closest information over which individuals associated with the filing or prosecution of a patent application believe any pending claim patentably defines, to make sure that any material information contained therein is disclosed to the Office.

(b) Under this section, information is material to patentability when it is not cumulative to information already of record or being made of record in the application, and

(1) It establishes, by itself or in combination with other information, a *prima facie* case of unpatentability of a claim; or

(2) It refutes, or is inconsistent with, a position the applicant takes in:

(i) Opposing an argument of unpatentability relied on by the Office, or

(ii) Asserting an argument of patentability.

A *prima facie* case of unpatentability is established when the information compels a conclusion that a claim is unpatentable under the preponderance of evidence, burden-of-proof standard, giving each term in the claim its broadest reasonable construction consistent with the specification, and before any consideration is given to evidence which may be submitted in an attempt to establish a contrary conclusion of patentability.

(c) Individuals associated with the filing or prosecution of a patent application within the meaning of this section are:

(1) Each inventor named in the application;

(2) Each attorney or agent who prepares or prosecutes the application; and

(3) Each other person who is substantively involved in the preparation or prosecution of the application and who is associated with the inventor, with the assignee or with anyone to whom there is an obligation to assign the application.

(d) Individuals other than the attorney, agent or inventor may comply with this section by disclosing information to the attorney, agent or inventor.